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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/025,279      02/18/98      SHELTON      R      A39-972-010

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TM02/1121

EXAMINER

FLEURANTIN, J

ART UNIT

PAPER NUMBER

2172

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*16*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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# Office Action Summary

Application No.  
09/025,279

Applicant(s)

Robert H. Shelton

Examiner  
Jean Bolte Fleurantin

Group Art Unit  
2172



☒ Responsive to communication(s) filed on Sep 8, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-81 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-81 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1 through 81 are remained for examination.

Applicant's arguments submitted on September 08, 2000, with respect to claims 1 and 42 have been fully considered but they are not persuasive.

### ***Response to Arguments***

As per claims 1 and 42, Applicant argues that the admitted prior art did not teach or fairly suggest:

On pages 12 through 15, Applicant argues that "a data processing means responsive to a request for patient medical data for comparing said request with said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data ". However, Examiner disagrees with this argument, where Evans does not explicitly teach the steps of data processing means responsive to a request for patient medical data for comparing said request with said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data; implicitly teaches step of providing instant access to a patient's electronic medical record by authorized health care providers from any geographical location; in addition authorized health care providers can access a record while other providers use the same record allowing for real time collaboration, which is readable as said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data (see col. 2, lines 45-64). Also, column 15,

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lines 21 through 47, Evans further teaches the invention ensures patient confidentiality through the use of a tiered password system, emergency medical record system provides several levels of security for access to patient data; thus, which is equivalent to request for patient medical data for comparing said request with said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data.

And, the emergency medical record system can store and retrieve scanned image of paper documents, such as deeds and assignments, as well as other native file formats, the emergency medical record system organizes and retrieves the data in a manner akin to that of patient's medical record. It would have been obvious to a person of ordinary skill in the art to have modified the teachings of Evans with the step of data processing means responsive to a request for patient medical data for comparing said request with said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data, because such modification would provide efficiently cost effective to move data instead of physical records and health care providers, and eliminates the mishandling loss, destruction of patient data typically associated with maintenance of physical data records (see col. 14, lines 30-41). And, to improve the accuracy and reliability of standing order database search system and method for Internet and Intranet application.

On pages 15 through 17, Applicant recites that: Annex A, B and C.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in

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a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Claim Rejections - 35 U.S.C. § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (U.S. Pat. No. 5,924,074).

As per claims 1 and 42, Evans substantially teaches a medical data base supervisory control system as claimed comprises at least one database including medical data individually relating to each of a plurality of patients (thus, the system likewise permits instant sophisticated analysis of patient data to identify relationships among the data considered, which is readable as medical data individually relating to each of a plurality of patients) (see, abstract, lines 1-17),

(b) means including interconnected computers for requesting and accessing said medical data (abstract, lines 5-12) and (see, figure 24, element 404),

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(d) means for identifying medical data for each of said patients with condition required for accessing said medical data (where, authorized health care providers can access a record while other providers use the same record, which is readable as identifying medical data for each of said patients with condition required for accessing said medical data) (see, col. 2, lines 53-64),

(d) data processing means responsive to a request for patient medical data for comparing said request with said conditions required for access to said data (see col. 3, lines 9-16). But, Evans does not explicitly teach when said conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data. However, implicitly Evans teaches steps of providing instant access to a patient's electronic medical record by authorized health care providers from any geographical location; in addition authorized health care providers can access a record while other providers use the same record allowing for real time collaboration, which is readable as conditions required for access of said data and, when said request fails to comply with said conditions, for denying access to said data "providing instant access to a patient's electronic medical record by authorized health care providers is equivalent to comply with said conditions" (see col. 2, lines 45-64). Also, in column 3, lines 9 through 24 Evans teaches wherein the patient record includes identifier and at least one data structure including the patient identifier and the data.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the teachings of Evans with the step when said request fails to comply with said conditions, for denying access to said data, because such modification would

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allow Evans to provide efficiently cost effective to move data instead of physical records and health care providers, and eliminates the mishandling loss, destruction of patient data typically associated with maintenance of physical data records (see col. 14, lines 30-41).

As per claims 2-3, 5, 43-44, and 46 Evans substantially teaches a system as claimed further includes means to prevent access to formation concerning medical records by any party without the prior authorization of the patient about whom such records pertain (see, cols. 5, and 6, lines 56-67 and 1-9).

As per claims 4 and 45, Evans substantially teaches a method as claimed further includes the step of tentatively identifying records fulfilling the criteria specified in said request for medical (see, col. 6, lines 7-9).

As per claims 6-7, and 47-48 Evans substantially teaches a system as claimed, wherein said means for requesting said medical data includes means for indicating what part of said records is desired (see, figure 15A).

As per claims 8-9 and 49-50, Evans substantially teaches a system as claimed, wherein said means for identifying records fulfilling such request further include data symbolic of medical symptoms or reason for patient visit (see, figure 15A, elements 252, 254, col. 9, lines 41-50).

As per claims 10-11 and 51-52, Evans substantially teaches a system as claimed, wherein said means for identifying records fulfilling such request further include data symbolic of the attributes, levels or findings indicated within said diagnostic tests (see, figure 7, col. 7, lines 10-28).

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As per claims 12-13 and 53-54, Evans substantially teaches a system as claimed, wherein said means for identifying records fulfilling such request further include data symbolic of modes of treatment or medical services rendered (see, col. 7, lines 54-64).

As per claims 14-15 and 55-56, Evans substantially teaches a system wherein said means used for identifying records fulfilling such request further include data symbolic of attending physician identity (see, col. 2, lines 50-54).

As per claims 16, 30 and 57, Evans substantially teaches as claimed, wherein said means for requesting and accessing said medical data includes means for indicating a "standing order" that will automatically initiate an attempt to retrieve certain pre-determined types of medical data under specific pre-specified circumstances (see, col. 2, lines 21-31).

As per claims 17, 58 and 63, Evans substantially teaches a system as claimed, wherein said conditions required for accessing said medical data includes an indication of the names of each of the parties who's permission must be obtained prior to the release of the such medical data (see, col. 9, lines 8-14).

As per claims 18-19, 59-61 and 78, Evans substantially teaches a system as claimed, wherein said conditions required for accessing said medical data further includes an indication of the charge that will be assessed by the holder of such medical data for the part, or in the form, specified by the requesting party (see, cols. 6 and 7, lines 54-67, and 1-5).

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As per claims 20, 22, 34 and 75, Evans substantially teaches a system as claimed, wherein said at least one data base includes a firewall limiting access to searching such data base solely to those parties who are authorized to do so (see, col. 15, lines 24-29).

As per claims 21, 31, 62 and 72, Evans substantially teaches a system as claimed, wherein said means for identifying medical data fulfilling the criteria specified in a request include a means for producing an indicia of the degree to which data listed in such data index match the criteria specified in such request (see, col. 9, lines 28-37).

As per claims 23 and 67, Evans substantially teaches a system as claimed, wherein said at least one data base includes a billing means for access to said medical data (see, col. 1, lines 25-30).

As per claims 24-25, 64 and 66, Evans substantially teaches a system as claimed, wherein said means to grant permission includes data symbolic of the identity of such party and data symbolic of the preferred means for contacting such party to request access to and release of said patient's medical data (see, abstract, lines 5-17).

As per claims 26, 43 and 45-46, Evans substantially teaches a system as claimed, further includes means for identifying the party requesting access to such medical data (see, figures 17A and 17B, col. 10, lines 42).

As per claims 27-29, 68-69 and 73, Evans substantially teaches a method as claimed, further includes means for producing an indicia of the required approvals for the release of such

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medical data that have not been secured, or that have been specifically declined (see, col. 2, lines 53-60).

As per claims 32-33 and 40, Evans substantially teaches a system as claimed, further includes means for billing said requesting party for the charge related to access to the medical data (see, abstract, lines 5-10).

As per claims 35-36 and 71, Evans substantially teaches a system as claimed, further includes means for producing an indicia that the requested medical data have been received in an online memory cache means and are being held there for download by the requesting party (see, cols. 9 and 10, lines 61-67, and 1-17).

As per claims 37, 39, 47 and 80-81, Evans substantially teaches a method as claimed, further includes the step of creating a security log and retaining an audit trail with regard to all of the communications between the parties (see, col. 3, lines 25-30).

As per claims 38, 74 and 79, Evans substantially teaches a system as claimed, further includes means for informing the requesting party when medical data is in a non-digital form and the mode of such delivery (see, col. 1, lines 53-64).

As per claim 41, Evans discloses a system as claimed, further comprises means for allowing parties to advertise in the public portions of said system (see, figure 22).

As per claim 65 and 70, Evan substantially teaches a method as claimed, wherein said step of providing for a party to grant permission includes data symbolic of the identity of such party

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and data symbolic of the preferred means for contacting such party to request access to and to the release of said patient's medical data (see, col. 2, lines 53-60).

As per claims 76 and 77, Evans substantially teaches a method as claimed, further includes the step of permitting a properly credentialed requesting party to enter through the firewall and download said medical data from the memory cache (see, cols. 9 and 10, lines 61-67, and 1-58).

*Conclusion*

4. Any inquiry concerning this communication from examiner should be directed to Jean Bolte Fleurantin at (703) 308-6718. The examiner can normally be reached on Monday to Friday from 7:30 A.M. to 6.00 P.M.

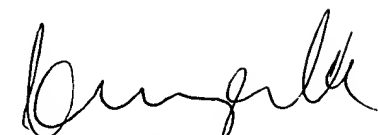
If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Mrs. KIM VU can be reached at (703) 305-9707. The FAX phone number is (703) 305-9731.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone is (703) 305-9600.

  
Jean Bolte Fleurantin

November 17, 2000

JBF/

  
KIM VU  
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